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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

The Hon. Roslynn R. Mauskopf
Director
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

April 1, 2021

Dear Judge Mauskopf:

As you are well aware from your experience, under the Constitution the President selects judicial nominees who are then appointed with the Advice and Consent of the Senate. At its most basic level, this process involves three discretionary steps: *first*, the President selects a nominee; *second*, the Senate votes to confirm that nominee; and, *third*, the President appoints him or her.

What happens between the first and second steps is a political process. In order to secure confirmation, the White House frequently must consult with home-state senators both as a matter of Judiciary Committee custom and practical vote-counting. Indeed, I wrote to President Biden early in his administration reminding him of this fact and urging him to consult with home-state senators of both parties—just as I so urged President Trump—as the most effective way of ensuring the speedy confirmation of district judges, U.S. Attorneys, and U.S. Marshals.

Different state senatorial delegations have different approaches to consultation. Some employ bipartisan commissions (e.g. Ohio), while others divide seats among senators (e.g. Pennsylvania), while still others at times invite cross-party members of House delegations to consult (e.g. Oregon). But these decisions are all made *by members of the United States Senate*, in which the Constitution vests the sole power of Advice and Consent.

This can be controversial. At times presidential administrations might not wish to deal with home-state senators of an opposing party. At times home-state senators might not wish to deal with a presidential administration of an opposing party. At times House members may feel entitled to have a seat at the table if their home-state senators are from the opposing party. All such cases result in political disputes. If a House member feels entitled to vet candidates and send them to the White House for consideration, that is a question of intrabranched and interbranch political conflict, nothing more and nothing less.

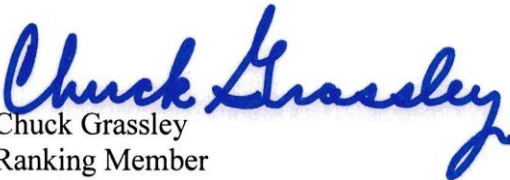
I was therefore alarmed to have it brought to my attention that a Federal District Court appears to have interposed itself in one such political conflict down in Florida. The website of the Middle District of Florida posted a notice: “Florida Federal JNC Accepting Applications.”¹ The website provides information for how candidates can apply to a *House-based* Judicial Nominating Commission for federal judicial offices in Florida. The “Commission” has no relation at all to Senators Rubio and Scott. I’ll note the audacity of a judicial “Commission” being chaired by a former federal judge who was impeached and removed from office. Yet perhaps more audacious still are the facts that this “Commission” has been purportedly stood up in direct contravention of the wishes of Florida’s two U.S. Senators, and that a Federal District Court has allowed itself to be dragged into a conflict between home-state senators and a House member seeking to usurp their constitutional authority.

By posting this notice, the District Court is giving credibility to the “Commission” against the stated views of Senators Rubio and Scott. There is no similar announcement for how interested parties can reach out to Florida’s U.S. Senators. The Middle District of Florida is, therefore, taking a side in a pending, partisan political dispute. As a result, the federal judiciary has found itself in the middle of a purely political conflict between the House, the Senate, and the President. This bodes ill for its perceived independence.

I have the following questions for you.

1. Is a court involving itself in a political dispute over the judicial-nomination process consistent with Canons 4 and 5 of the Code of Conduct for United States Judges?
2. What steps does the AO take to ensure that district and circuit courts know not to involve themselves in these kinds of political disputes?
3. What action, if any, do you intend to take now that this matter has been brought to your attention?

Thank you.


Chuck Grassley
Ranking Member
Judiciary Committee

¹ See, *Florida Federal JNC Accepting Applications*, U.S. District Court for the Middle District of Florida, <https://www.flmd.uscourts.gov/announcements/florida-federal-jnc-accepting-applications>.